

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LEGACY CHARTER, LLC d/b/a  
LEGACY TRADITIONAL SCHOOL,

and

Case 28-CA-201248

CARMEN HORSTMAN, an Individual

JOINT MOTION TO REMAND CASE TO REGION  
TO EFFECTUATE COMPLIANCE WITH PARTIES' SETTLEMENT

Respondent Legacy Charter, LLC d/b/a Legacy Traditional School and Charging Party Carmen Horstman jointly move the Board to remand the above-referenced case to the Region to effectuate compliance with the terms of the non-Board settlement agreement reached by the Respondent and Charging Party.

1. This case was heard before Administrative Law Judge Jeffrey Wedekind, who issued a decision finding that the Respondent had violated Section 8(a)(1) by maintaining an overbroad dress code and solicitation policy in its employee handbook, and by advising Charging Party that it was not renewing her employment contract for the following academic year because she had repeatedly expressed unhappiness with some of the Respondent's policies and by not renewing Charging Party's employment contract because of that reason. The Judge ordered the Respondent to rescind the dress code and solicitation rules, offer to rehire the Charging Party, make her whole for any losses resulting from the non-renewal of her teaching contract, and post a notice.

2. The parties agreed to enter into mediated settlement discussions under the Board's Alternative Dispute Resolution Program. Pursuant to those discussions the Respondent and Charging Party reached a settlement resolving all outstanding issues in the case.
3. The settlement agreement, which is appended, provides for rescission and replacement of the dress code and solicitation policies in the Respondent's handbook. The solicitation policy has been revised so that it limits solicitation only during work time instead of work hours, and further provides that nothing in this solicitation policy should be read as interfering in any way with any of Respondent's employees' rights under the National Labor Relations Act. The dress code policy has been revised to provide that that the policy does not prohibit or restrain employees from wearing clothing, buttons, and pins containing union or other protected concerted messages, and that nothing in this dress code should be read as interfering in any way with any of Respondent's employees' rights under the National Labor Relations Act. These revisions, a copy of which is appended to the settlement agreement, fully eliminate the wording of the policies that the Judge found to be objectionable.
4. The agreement also provides for payment of \$76,000 to the Charging Party, which represents 100% of the backpay owed for one year's salary, plus 100% of the interest and extra tax liability on that amount. Respondent has also agreed to provide the Charging Party with a letter of reference from Deputy Superintendent Paula Jensen, which has been approved by the Charging Party (copy appended to settlement agreement), and the Respondent has agreed that Superintendent

Jensen will serve as a reference for Charging Party in the event that any prospective employer contacts the Respondent regarding the Charging Party.

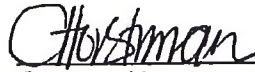
The Charging Party's personnel file has also been expunged of any reference to the non-renewal of her contract and revised to reflect that she is eligible for rehire and that she resigned. The Charging Party has waived reinstatement.

5. The settlement agreement further provides for the communication of a notice by email to all of Respondent's employees that the dress code and solicitation policies in its handbook have been rescinded and replaced, and provides the employees with the revised versions of the policies, as well as assurances that Respondent will respect their rights under the NLRA. The settlement also provides for a separate email communication to employees at the school where Charging Party previously worked that provides, in addition to the information set forth in the communication to all of Respondent's employees, a statement that the complaint filed by the Charging Party against the Respondent under the NLRA has been resolved to the satisfaction of the Charging Party.
6. The Charging Party and the Respondent have agreed to be bound by the settlement. The settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation. None of the parties have engaged in fraud, coercion, or duress in reaching the settlement. The Respondent does not have a history of unfair labor practices, and the Respondent has not previously breached any settlements resolving unfair labor practice allegations. Therefore, remand of this case to the Region for

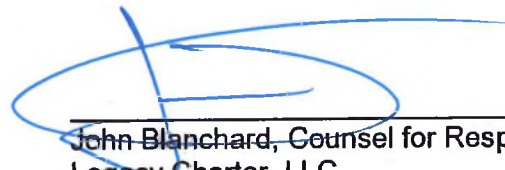
effectuation of compliance with the parties' settlement is appropriate. See  
Independent Stave, 287 NLRB 740, 790 (1987).

WHEREFORE, for the foregoing reasons, the Respondent and Charging Party  
respectfully request that the Board grant this motion and remand the case to the Region  
for effectuation of compliance with the settlement agreement.

Respectfully submitted,



Carmen Horstman, Charging Party



John Blanchard, Counsel for Respondent  
Legacy Charter, LLC  
d/b/a Legacy Traditional School

## **SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS**

## **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This Settlement Agreement and Release of Claims ("Agreement") is between **Carmen Horstman** ("Charging Party") on the one hand, and **Legacy Traditional Schools-Gilbert** ("LTS" or "Respondent") on the other hand. Charging Party and Respondent may at times be referred to collectively as the "Parties."

### **RECITALS**

- A. LTS employed Charging Party from July 2013 through May 2017 as a teacher for the Gilbert school. LTS did not renew her contract for the upcoming 2018-2019 school-year. (the "Employment").
- B. The Parties are engaged in a pending matter before the National Labor Relations Board, Case 28-CA-201248, in which General Counsel of the NLRB issued a complaint, alleging that Charging Party's employment contract was not renewed because she repeatedly raised concerns with LTS about working conditions, in violation of the National Labor Relations Act (NLRA). After an evidentiary hearing, the Administrative Law Judge issued a Decision on August 16, 2018 in favor of Charging Party and awarding her back-pay, reinstatement, and other relief. Respondent disagrees with the legal and factual basis of the ALJ Decision and intended to file exceptions and seek an appeal on the jurisdictional issues and the merits (the "Action").
- C. The Parties have concluded that settlement of the claims, demands, debts, and causes of action arising out of or related to the Employment, the Action, the ALJ Decision and all other related disputes between them, is in their mutual best interests and the Parties desire to express in a written agreement their mutual agreements, covenants, promises, and understandings with respect to the settlement of these claims and matters. The Charging Party has agreed to withdraw the unfair labor practice charge on which the allegations contained in the complaint in the Action are based.

### **AGREEMENT**

1. **Withdrawal of NLRB Charge:** Charging Party agrees to withdraw the unfair labor practice charge on which the allegations contained in the complaint in the Action and the ALJ Decision are based, and the withdrawal shall become effective on the date that the NLRB approves the parties' settlement (the "Effective Date").
2. **Settlement Amount:** Within 5 business days after the Effective Date, subject to Charging Party's execution of this Agreement and in consideration of the mutual covenants and promises set forth herein, LTS will pay the total amount of \$76,000.00 to Charging Party by delivering checks to her as follows:

- a. \$66,600.00, less regular withholdings as required by law. This is in settlement of her claim that LTS's decision not to renew her employment contract violated the NLRA;
- b. \$9,400. This is in settlement of her claim for interest and tax damages on the backpay.

3. **Letter of Recommendation and Employment File:** Upon the Effective Date, and contingent on Charging Party's execution of this Agreement, LTS will deliver electronically to Charging Party a finalized and signed Letter of Recommendation from Deputy Superintendent Paula Jensen, a draft of which was previously provided to and approved by Charging Party (copy attached as **Appendix B**). LTS shall also confirm that Charging Party's employment file reflects that she is eligible for rehire and that her departure from LTS employment was a resignation, and that her record is expunged with respect to any mention of the non-renewal of her teaching contract. To the extent reasonably possible, Deputy Superintendent Paula Jensen will serve as the point of contact for Charging Party and the prospective employers that she directs to LTS regarding Charging Party. To that end, Charging Party may provide prospective employers Ms. Jensen's contact information.

4. **Changes to Employee Policies:** Within 30 days following the NLRB's withdrawal of the Action and contingent on the Charging Party's execution of this Agreement, LTS will announce to LTS employees the changes to the employment policies agreed to, which have already been implemented. The text of the revised policies is set forth in Appendix A.

5. **Communication of Notice to Employees.** Respondent agrees to submit the following communications to its employees as follows:

Within 30 days following the NLRB's withdrawal of the Action, the Respondent will communicate to all Legacy School employees by e-mail the following information: "Attached please find changes to the LTS employment policies, which will be effective immediately for the 2019-2020 school year. LTS has always respected, and will continue to respect, your rights under the NLRA, including employees' rights to act together with other employees for your benefit and protection, or choose not to engage in any of these and other protected activities. [Text of revised solicitation and dress code policies as set forth in Appendix A will be provided.]"

Within 30 days following the NLRB's withdrawal of the Action, the Respondent will communicate to its employees at the Legacy Traditional School in Gilbert, Arizona, by email the following information: "Attached please find changes to the LTS employment policies, which will be effective immediately for the 2019-2020 school year. [Text of revised solicitation and dress code policies as set forth in Appendix A will be provided.] The School has resolved a complaint filed by a former teacher alleging violations of the National Labor Relations Act (NLRA), that complaint has been resolved to the satisfaction of Legacy Traditional School and the teacher, and the complaint withdrawn. LTS has always respected, and will continue to respect, your rights under the NLRA, including employees' rights to act together with other employees for your benefit and protection, or choose not to engage in any of these and other protected activities."

6. **No Admission of Liability:** It is understood and expressly agreed that nothing in this Agreement, this settlement, or any related documents, shall be construed as an admission of

any liability whatsoever on the part of Respondent, and liability has always been and now is expressly denied. By entering into this Agreement, LTS does not admit that it has violated the National Labor Relations Act (or engaged in any of the conduct alleged in the complaint or as described in the ALJ Decision). The Parties acknowledge and agree that this Agreement and the mutual waivers hereunder are made in compromise and settlement of disputed claims.

7. **Charging Party's Releases:** Charging Party agrees that the foregoing consideration represents settlement in full of all outstanding obligations owed to Charging Party by LTS and its current and former officers, directors, founders, employees, agents, investors, attorneys, shareholders, administrators, affiliates, benefit plans, plan administrators, insurers, trustees, divisions, and subsidiaries, and predecessor and successor corporations and assigns (collectively, the "Releasees"). Charging Party, on her own behalf and on behalf of respective heirs, family members, executors, agents, and assigns, hereby and forever releases the Releasees from, and agrees not to sue concerning, or in any manner to institute, prosecute, or pursue, any claim, complaint, charge, duty, obligation, demand, or cause of action, which could have been asserted in the Action or which arise from or relate in any way to the Employment, the Action, the NLRB complaint, the draft consent orders, the ALJ Decision, and/or any other actions, inactions, writings, statements, errors or omissions of the Parties in connection with any of the foregoing.

Charging Party agrees that the release set forth in this section will be and remain in effect in all respects as a complete general release as to the matters released. This release does not extend to any obligations incurred under this Agreement. This release does not release claims that cannot be released as a matter of law.

8. **Attorneys' Fees and Costs:** Each Party waives the right to recover attorneys' fees and costs in connection with the Action. In the event of any litigation or legal proceedings to enforce or interpret this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs as provided by the laws of the State of Arizona.

9. **No Assignment:** Each Party represents and warrants that it has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein against any other Party.

10. **Governing Law:** This Agreement will be construed in accord with, and any dispute or controversy arising from any breach or asserted breach of this Agreement will be governed by, the laws of the State of Arizona without regard to conflict of law provisions thereof.

11. **Entire Agreement:** This Agreement constitutes the entire integrated agreement between the parties and supersedes any and all prior and/or contemporaneous agreements, promises, representations, negotiations, statements and/or understandings of the Parties.

12. **Modification:** No modification or amendment to this Agreement shall be effective unless in writing and executed by both parties.



13. **Review of Agreement:** The Parties expressly acknowledge that they have entered this Agreement knowingly and voluntarily and that each party has had the opportunity to receive the advice of counsel with respect to this Agreement and the settlement of this matter.

14. **No Waiver:** Neither the failure, nor any delay on the part of any Party, to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence.

15. **Execution of Agreement:** The Agreement may be executed in counterparts and via facsimile or scanned electronic copy. The execution by all of the Parties hereto by each signing a counterpart of this Agreement and Release instrument shall constitute a valid execution. This instrument and all of its counterparts so executed shall be deemed for all purposes to be a single instrument. The receipt by any Party of a facsimile or scanned electronic copy of a signed copy of the Agreement shall have the same force and effect as receipt of a signed original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth below.

By: C. Horstman  
Carmen Horstman, Charging Party

Date: 4-9-19

Legacy Traditional Schools-Gilbert

By: B. Jones  
Brandon Jones  
Its: President and CEO

Date: 4-8-19

## Appendix A

### Revised Solicitation and Dress Code Policies:

#### **Solicitation Policy**

Solicitation during working time is not permitted. . . . Nothing in this Solicitation Policy should be read as interfering in any way with any LTS employee's rights under the National Labor Relations Act.

#### **Dress Code**

Employees of LTS are expected to present a clean and professional appearance while teaching in the classroom, working out on the grounds, conducting a meeting or working in the office. If an alternative shoe or clothing item is needed due to a health issue, a current doctor's note (less than a year old) must be supplied to your Supervisor for approval prior to wearing the alternative item. Your doctor's note must be renewed from year to year. Importantly, nothing in this Dress Code should be read as interfering in any way with any LTS employee's rights under the National Labor Relations Act. While this Dress Code requires employees to present a clean and professional appearance, this policy does not prohibit or restrain employees from wearing clothing, buttons, and pins containing union or other protected concerted messages. Please contact your supervisor or Human Resources for specific dress code questions. With these general policies in mind, please observe the following guidelines for professional dress:

#### WOMEN (ALL POSITIONS NOT LISTED OTHERWISE)

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Unacceptable (except as set forth above)

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#### SUMMER OFFICE DRESS CODE

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Unacceptable (except as set forth above)

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## Appendix B

Text of Letter of Reference from Deputy Superintendent Paula Jensen:

To Whom It May Concern:

Thank you for allowing me the opportunity to share my thoughts regarding Carmen Horstman. I have been able to observe Carmen in the classroom and respect her ability to communicate her knowledge to students in a way that supports engagement and ensures strong learning outcomes.

Carmen was hired to be one of our teachers at a new campus. She was instrumental in working with her grade level team to organize the daily schedules and routines of the grade level. Her responsibilities included, the development and implementation of curriculum pacing guides, creating scheduling that supported academic success, and coordinating professional learning communities with her team in the effort to collaborate and share classroom achievements and areas of concern.

She demonstrated great initiative when working with her fellow peers. She worked with others to share her knowledge of the program of instruction that centered around ensuring student success.

I am pleased to have the opportunity to recommend Carmen for a teaching position. Her ability of organize the daily responsibilities of the classroom and connect with her students to ensure academic success is commendable.

If you have any further questions, please feel free to email me at [paula.jensen@vertexeducation.com](mailto:paula.jensen@vertexeducation.com).

Best regards,

Paula Jensen, M.Ed.  
Deputy Superintendent